

Directive 2004/25/EC of the European Parliament and of the Council
of 21 April 2004 on takeover bids (Text with EEA relevance)

DIRECTIVE 2004/25/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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on takeover bids

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) In accordance with Article 44(2)(g) of the Treaty, it is necessary to coordinate certain safeguards which, for the protection of the interests of members and others, Member States require of companies governed by the law of a Member State the securities of which are admitted to trading on a regulated market in a Member State, with a view to making such safeguards equivalent throughout the Community.
- (2) It is necessary to protect the interests of holders of the securities of companies governed by the law of a Member State when those companies are the subject of takeover bids or of changes of control and at least some of their securities are admitted to trading on a regulated market in a Member State.
- (3) It is necessary to create Community-wide clarity and transparency in respect of legal issues to be settled in the event of takeover bids and to prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management cultures.
- (4) In view of the public-interest purposes served by the central banks of the Member States, it seems inconceivable that they should be the targets of takeover bids. Since, for historical reasons, the securities of some of those central banks are listed on regulated markets in Member States, it is necessary to exclude them explicitly from the scope of this Directive.
- (5) Each Member State should designate an authority or authorities to supervise those aspects of bids that are governed by this Directive and to ensure that parties to takeover bids comply with the rules made pursuant to this Directive. All those authorities should cooperate with one another.

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- (6) In order to be effective, takeover regulation should be flexible and capable of dealing with new circumstances as they arise and should accordingly provide for the possibility of exceptions and derogations. However, in applying any rules or exceptions laid down or in granting any derogations, supervisory authorities should respect certain general principles.
- (7) Self-regulatory bodies should be able to exercise supervision.
- (8) In accordance with general principles of Community law, and in particular the right to a fair hearing, decisions of a supervisory authority should in appropriate circumstances be susceptible to review by an independent court or tribunal. However, Member States should be left to determine whether rights are to be made available which may be asserted in administrative or judicial proceedings, either in proceedings against a supervisory authority or in proceedings between parties to a bid.
- (9) Member States should take the necessary steps to protect the holders of securities, in particular those with minority holdings, when control of their companies has been acquired. The Member States should ensure such protection by obliging the person who has acquired control of a company to make an offer to all the holders of that company's securities for all of their holdings at an equitable price in accordance with a common definition. Member States should be free to establish further instruments for the protection of the interests of the holders of securities, such as the obligation to make a partial bid where the offeror does not acquire control of the company or the obligation to announce a bid at the same time as control of the company is acquired.
- (10) The obligation to make a bid to all the holders of securities should not apply to those controlling holdings already in existence on the date on which the national legislation transposing this Directive enters into force.
- (11) The obligation to launch a bid should not apply in the case of the acquisition of securities which do not carry the right to vote at ordinary general meetings of shareholders. Member States should, however, be able to provide that the obligation to make a bid to all the holders of securities relates not only to securities carrying voting rights but also to securities which carry voting rights only in specific circumstances or which do not carry voting rights.
- (12) To reduce the scope for insider dealing, an offeror should be required to announce his/her decision to launch a bid as soon as possible and to inform the supervisory authority of the bid.
- (13) The holders of securities should be properly informed of the terms of a bid by means of an offer document. Appropriate information should also be given to the representatives of the company's employees or, failing that, to the employees directly.
- (14) The time allowed for the acceptance of a bid should be regulated.
- (15) To be able to perform their functions satisfactorily, supervisory authorities should at all times be able to require the parties to a bid to provide information concerning themselves and should cooperate and supply information in an efficient and effective manner, without delay, to other authorities supervising capital markets.

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- (16) In order to prevent operations which could frustrate a bid, the powers of the board of an offeree company to engage in operations of an exceptional nature should be limited, without unduly hindering the offeree company in carrying on its normal business activities.
- (17) The board of an offeree company should be required to make public a document setting out its opinion of the bid and the reasons on which that opinion is based, including its views on the effects of implementation on all the company's interests, and specifically on employment.
- (18) In order to reinforce the effectiveness of existing provisions concerning the freedom to deal in the securities of companies covered by this Directive and the freedom to exercise voting rights, it is essential that the defensive structures and mechanisms envisaged by such companies be transparent and that they be regularly presented in reports to general meetings of shareholders.
- (19) Member States should take the necessary measures to afford any offeror the possibility of acquiring majority interests in other companies and of fully exercising control of them. To that end, restrictions on the transfer of securities, restrictions on voting rights, extraordinary appointment rights and multiple voting rights should be removed or suspended during the time allowed for the acceptance of a bid and when the general meeting of shareholders decides on defensive measures, on amendments to the articles of association or on the removal or appointment of board members at the first general meeting of shareholders following closure of the bid. Where the holders of securities have suffered losses as a result of the removal of rights, equitable compensation should be provided for in accordance with the technical arrangements laid down by Member States.
- (20) All special rights held by Member States in companies should be viewed in the framework of the free movement of capital and the relevant provisions of the Treaty. Special rights held by Member States in companies which are provided for in private or public national law should be exempted from the 'breakthrough' rule if they are compatible with the Treaty.
- (21) Taking into account existing differences in Member States' company law mechanisms and structures, Member States should be allowed not to require companies established within their territories to apply the provisions of this Directive limiting the powers of the board of an offeree company during the time allowed for the acceptance of a bid and those rendering ineffective barriers, provided for in the articles of association or in specific agreements. In that event Member States should at least allow companies established within their territories to make the choice, which must be reversible, to apply those provisions. Without prejudice to international agreements to which the European Community is a party, Member States should be allowed not to require companies which apply those provisions in accordance with the optional arrangements to apply them when they become the subject of offers launched by companies which do not apply the same provisions, as a consequence of the use of those optional arrangements.

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- (22) Member States should lay down rules to cover the possibility of a bid's lapsing, the offeror's right to revise his/her bid, the possibility of competing bids for a company's securities, the disclosure of the result of a bid, the irrevocability of a bid and the conditions permitted.
- (23) The disclosure of information to and the consultation of representatives of the employees of the offeror and the offeree company should be governed by the relevant national provisions, in particular those adopted pursuant to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁽⁴⁾, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁽⁵⁾, Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European Company with regard to the involvement of employees⁽⁶⁾ and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation⁽⁷⁾. The employees of the companies concerned, or their representatives, should nevertheless be given an opportunity to state their views on the foreseeable effects of the bid on employment. Without prejudice to the rules of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁽⁸⁾, Member States may always apply or introduce national provisions concerning the disclosure of information to and the consultation of representatives of the employees of the offeror before an offer is launched.
- (24) Member States should take the necessary measures to enable an offeror who, following a takeover bid, has acquired a certain percentage of a company's capital carrying voting rights to require the holders of the remaining securities to sell him/her their securities. Likewise, where, following a takeover bid, an offeror has acquired a certain percentage of a company's capital carrying voting rights, the holders of the remaining securities should be able to require him/her to buy their securities. These squeeze-out and sell-out procedures should apply only under specific conditions linked to takeover bids. Member States may continue to apply national rules to squeeze-out and sell-out procedures in other circumstances.
- (25) Since the objectives of the action envisaged, namely to establish minimum guidelines for the conduct of takeover bids and ensure an adequate level of protection for holders of securities throughout the Community, cannot be sufficiently achieved by the Member States because of the need for transparency and legal certainty in the case of cross-border takeovers and acquisitions of control, and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

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- (26) The adoption of a Directive is the appropriate procedure for the establishment of a framework consisting of certain common principles and a limited number of general requirements which Member States are to implement through more detailed rules in accordance with their national systems and their cultural contexts.
- (27) Member States should, however, provide for sanctions for any infringement of the national measures transposing this Directive.
- (28) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary, to take account of new developments on financial markets. For certain provisions, the Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and the Commission acts in accordance with the principles set out in this Directive, after consulting the European Securities Committee established by Commission Decision 2001/528/EC⁽⁹⁾. The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁰⁾ and with due regard to the declaration made by the Commission in the European Parliament on 5 February 2002 concerning the implementation of financial services legislation. For the other provisions, it is important to entrust a contact committee with the task of assisting Member States and the supervisory authorities in the implementation of this Directive and of advising the Commission, if necessary, on additions or amendments to this Directive. In so doing, the contact committee may make use of the information which Member States are to provide on the basis of this Directive concerning takeover bids that have taken place on their regulated markets.
- (29) The Commission should facilitate movement towards the fair and balanced harmonisation of rules on takeovers in the European Union. To that end, the Commission should be able to submit proposals for the timely revision of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1 This Directive lays down measures coordinating the laws, regulations, administrative provisions, codes of practice and other arrangements of the Member States, including arrangements established by organisations officially authorised to regulate the markets (hereinafter referred to as 'rules'), relating to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market within the meaning of Directive 93/22/EEC⁽¹¹⁾ in one or more Member States (hereinafter referred to as a 'regulated market').

2 This Directive shall not apply to takeover bids for securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies. Action taken by such

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companies to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption.

3 This Directive shall not apply to takeover bids for securities issued by the Member States' central banks.

Article 2

Definitions

1 For the purposes of this Directive:

- a 'takeover bid' or 'bid' shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;
- b 'offeree company' shall mean a company, the securities of which are the subject of a bid;
- c 'offeror' shall mean any natural or legal person governed by public or private law making a bid;
- d 'persons acting in concert' shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;
- e 'securities' shall mean transferable securities carrying voting rights in a company;
- f 'parties to the bid' shall mean the offeror, the members of the offeror's board if the offeror is a company, the offeree company, holders of securities of the offeree company and the members of the board of the offeree company, and persons acting in concert with such parties;
- g 'multiple-vote securities' shall mean securities included in a distinct and separate class and carrying more than one vote each.

2 For the purposes of paragraph 1(d), persons controlled by another person within the meaning of Article 87 of Directive 2001/34/EC⁽¹²⁾ shall be deemed to be persons acting in concert with that other person and with each other.

Article 3

General principles

1 For the purpose of implementing this Directive, Member States shall ensure that the following principles are complied with:

- a all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;
- b the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
- c the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

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- d false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
 - e an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
 - f an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.
- 2 With a view to ensuring compliance with the principles laid down in paragraph 1, Member States:
- a shall ensure that the minimum requirements set out in this Directive are observed;
 - b may lay down additional conditions and provisions more stringent than those of this Directive for the regulation of bids.

Article 4

Supervisory authority and applicable law

1 Member States shall designate the authority or authorities competent to supervise bids for the purposes of the rules which they make or introduce pursuant to this Directive. The authorities thus designated shall be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Member States shall inform the Commission of those designations, specifying any divisions of functions that may be made. They shall ensure that those authorities exercise their functions impartially and independently of all parties to a bid.

- 2
- a The authority competent to supervise a bid shall be that of the Member State in which the offeree company has its registered office if that company's securities are admitted to trading on a regulated market in that Member State.
 - b If the offeree company's securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company's securities are admitted to trading.

If the offeree company's securities are admitted to trading on regulated markets in more than one Member State, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the securities were first admitted to trading.

- c If the offeree company's securities were first admitted to trading on regulated markets in more than one Member State simultaneously, the offeree company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise the bid by notifying those regulated markets and their supervisory authorities on the first day of trading.

If the offeree company's securities have already been admitted to trading on regulated markets in more than one Member State on the date laid down in Article 21(1) and were admitted simultaneously, the supervisory authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of the date laid down in Article 21(1). Otherwise, the offeree company shall

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determine which of those authorities shall be the competent authority on the first day of trading following that four-week period.

- d Member States shall ensure that the decisions referred to in (c) are made public.
- e In the cases referred to in (b) and (c), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Member State of the competent authority. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the offeree company has its registered office.

3 Member States shall ensure that all persons employed or formerly employed by their supervisory authorities are bound by professional secrecy. No information covered by professional secrecy may be divulged to any person or authority except under provisions laid down by law.

4 The supervisory authorities of the Member States for the purposes of this Directive and other authorities supervising capital markets, in particular in accordance with Directive 93/22/EEC, Directive 2001/34/EC, Directive 2003/6/EC and Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive and in particular in cases covered by paragraph 2(b), (c) and (e). Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the supervisory authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.

5 The supervisory authorities shall be vested with all the powers necessary for the purpose of carrying out their duties, including that of ensuring that the parties to a bid comply with the rules made or introduced pursuant to this Directive.

Provided that the general principles laid down in Article 3(1) are respected, Member States may provide in the rules that they make or introduce pursuant to this Directive for derogations from those rules:

- (i) by including such derogations in their national rules, in order to take account of circumstances determined at national level
and/or
- (ii) by granting their supervisory authorities, where they are competent, powers to waive such national rules, to take account of the circumstances referred to in (i) or in other specific circumstances, in which case a reasoned decision must be required.

6 This Directive shall not affect the power of the Member States to designate judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed in the course of bids or the power of Member States to regulate whether and under

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which circumstances parties to a bid are entitled to bring administrative or judicial proceedings. In particular, this Directive shall not affect the power which courts may have in a Member State to decline to hear legal proceedings and to decide whether or not such proceedings affect the outcome of a bid. This Directive shall not affect the power of the Member States to determine the legal position concerning the liability of supervisory authorities or concerning litigation between the parties to a bid.

Article 5

Protection of minority shareholders, the mandatory bid and the equitable price

1 Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.

2 Where control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings, the obligation laid down in paragraph 1 to launch a bid shall no longer apply.

3 The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office.

4 The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1 shall be regarded as the equitable price. If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.

Provided that the general principles laid down in Article 3(1) are respected, Member States may authorise their supervisory authorities to adjust the price referred to in the first subparagraph in circumstances and in accordance with criteria that are clearly determined. To that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

Any decision by a supervisory authority to adjust the equitable price shall be substantiated and made public.

5 By way of consideration the offeror may offer securities, cash or a combination of both.

However, where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, it shall include a cash alternative.

In any event, the offeror shall offer a cash consideration at least as an alternative where he/she or persons acting in concert with him/her, over a period beginning at the same time as the period determined by the Member State in accordance with paragraph 4 and ending when the offer closes for acceptance, has purchased for cash securities carrying 5 % or more of the voting rights in the offeree company.

Member States may provide that a cash consideration must be offered, at least as an alternative, in all cases.

6 In addition to the protection provided for in paragraph 1, Member States may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.

Article 6

Information concerning bids

1 Member States shall ensure that a decision to make a bid is made public without delay and that the supervisory authority is informed of the bid. They may require that the supervisory authority must be informed before such a decision is made public. As soon as the bid has been made public, the boards of the offeree company and of the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

2 Member States shall ensure that an offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid. Before the offer document is made public, the offeror shall communicate it to the supervisory authority. When it is made public, the boards of the offeree company and of the offeror shall communicate it to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

Where the offer document referred to in the first subparagraph is subject to the prior approval of the supervisory authority and has been approved, it shall be recognised, subject to any translation required, in any other Member State on the market of which the offeree company's securities are admitted to trading, without its being necessary to obtain the approval of the supervisory authorities of that Member State. Those authorities may require the inclusion of additional information in the offer document only if such information is specific to the market of a Member State or Member States on which the offeree company's securities are admitted to trading and relates to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject.

3 The offer document referred to in paragraph 2 shall state at least:

- a the terms of the bid;
- b the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company;

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- c the securities or, where appropriate, the class or classes of securities for which the bid is made;
 - d the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;
 - e the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 11(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it;
 - f the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
 - g details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the offeree company;
 - h all the conditions to which the bid is subject;
 - i the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business;
 - j the time allowed for acceptance of the bid;
 - k where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
 - l information concerning the financing for the bid;
 - m the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company;
 - n the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts.
- 4 The Commission shall adopt rules for the application of paragraph 3 in accordance with the procedure referred to in Article 18(2).
- 5 Member States shall ensure that the parties to a bid are required to provide the supervisory authorities of their Member State at any time on request with all the information in their possession concerning the bid that is necessary for the supervisory authority to discharge its functions.

Article 7

Time allowed for acceptance

- 1 Member States shall provide that the time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document. Provided that the general principle laid down in Article 3(1)(f) is respected, Member States may provide that the period of 10 weeks may be extended on condition that the offeror gives at least two weeks' notice of his/her intention of closing the bid.
- 2 Member States may provide for rules changing the period referred to in paragraph 1 in specific cases. A Member State may authorise a supervisory authority to grant a derogation

from the period referred to in paragraph 1 in order to allow the offeree company to call a general meeting of shareholders to consider the bid.

Article 8

Disclosure

1 Member States shall ensure that a bid is made public in such a way as to ensure market transparency and integrity for the securities of the offeree company, of the offeror or of any other company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information.

2 Member States shall provide for the disclosure of all information and documents required by Article 6 in such a manner as to ensure that they are both readily and promptly available to the holders of securities at least in those Member States on the regulated markets of which the offeree company's securities are admitted to trading and to the representatives of the employees of the offeree company and the offeror or, where there are no such representatives, to the employees themselves.

Article 9

Obligations of the board of the offeree company

1 Member States shall ensure that the rules laid down in paragraphs 2 to 5 are complied with.

2 During the period referred to in the second subparagraph, the board of the offeree company shall obtain the prior authorisation of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

Such authorisation shall be mandatory at least from the time the board of the offeree company receives the information referred to in the first sentence of Article 6(1) concerning the bid and until the result of the bid is made public or the bid lapses. Member States may require that such authorisation be obtained at an earlier stage, for example as soon as the board of the offeree company becomes aware that the bid is imminent.

3 As regards decisions taken before the beginning of the period referred to in the second subparagraph of paragraph 2 and not yet partly or fully implemented, the general meeting of shareholders shall approve or confirm any decision which does not form part of the normal course of the company's business and the implementation of which may result in the frustration of the bid.

4 For the purpose of obtaining the prior authorisation, approval or confirmation of the holders of securities referred to in paragraphs 2 and 3, Member States may adopt rules allowing a general meeting of shareholders to be called at short notice, provided that the meeting does not take place within two weeks of notification's being given.

5 The board of the offeree company shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer

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document in accordance with Article 6(3)(i). The board of the offeree company shall at the same time communicate that opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves. Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document.

6 For the purposes of paragraph 2, where a company has a two-tier board structure ‘board’ shall mean both the management board and the supervisory board.

Article 10

Information on companies as referred to in Article 1(1)

1 Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:

- a the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;
- b any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;
- c significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of Directive 2001/34/EC;
- d the holders of any securities with special control rights and a description of those rights;
- e the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
- f any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company’s cooperation, the financial rights attaching to securities are separated from the holding of securities;
- g any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights within the meaning of Directive 2001/34/EC;
- h the rules governing the appointment and replacement of board members and the amendment of the articles of association;
- i the powers of board members, and in particular the power to issue or buy back shares;
- j any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;
- k any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.

2 The information referred to in paragraph 1 shall be published in the company’s annual report as provided for in Article 46 of Directive 78/660/EEC⁽¹³⁾ and Article 36 of Directive 83/349/EEC⁽¹⁴⁾.

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3 Member States shall ensure, in the case of companies the securities of which are admitted to trading on a regulated market in a Member State, that the board presents an explanatory report to the annual general meeting of shareholders on the matters referred to in paragraph 1.

Article 11

Breakthrough

1 Without prejudice to other rights and obligations provided for in Community law for the companies referred to in Article 1(1), Member States shall ensure that the provisions laid down in paragraphs 2 to 7 apply when a bid has been made public.

2 Any restrictions on the transfer of securities provided for in the articles of association of the offeree company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

Any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

3 Restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Multiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

4 Where, following a bid, the offeror holds 75 % or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs 2 and 3 nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the offeree company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.

To that end, the offeror shall have the right to convene a general meeting of shareholders at short notice, provided that the meeting does not take place within two weeks of notification.

5 Where rights are removed on the basis of paragraphs 2, 3, or 4 and/or Article 12, equitable compensation shall be provided for any loss suffered by the holders of those rights. The terms for determining such compensation and the arrangements for its payment shall be set by Member States.

6 Paragraphs 3 and 4 shall not apply to securities where the restrictions on voting rights are compensated for by specific pecuniary advantages.

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7 This Article shall not apply either where Member States hold securities in the offeree company which confer special rights on the Member States which are compatible with the Treaty, or to special rights provided for in national law which are compatible with the Treaty or to cooperatives.

Article 12

Optional arrangements

1 Member States may reserve the right not to require companies as referred to in Article 1(1) which have their registered offices within their territories to apply Article 9(2) and (3) and/or Article 11.

2 Where Member States make use of the option provided for in paragraph 1, they shall nevertheless grant companies which have their registered offices within their territories the option, which shall be reversible, of applying Article 9(2) and (3) and/or Article 11, without prejudice to Article 11(7).

The decision of the company shall be taken by the general meeting of shareholders, in accordance with the law of the Member State in which the company has its registered office in accordance with the rules applicable to amendment of the articles of association. The decision shall be communicated to the supervisory authority of the Member State in which the company has its registered office and to all the supervisory authorities of Member States in which its securities are admitted to trading on regulated markets or where such admission has been requested.

3 Member States may, under the conditions determined by national law, exempt companies which apply Article 9(2) and (3) and/or Article 11 from applying Article 9(2) and (3) and/or Article 11 if they become the subject of an offer launched by a company which does not apply the same Articles as they do, or by a company controlled, directly or indirectly, by the latter, pursuant to Article 1 of Directive 83/349/EEC.

4 Member States shall ensure that the provisions applicable to the respective companies are disclosed without delay.

5 Any measure applied in accordance with paragraph 3 shall be subject to the authorisation of the general meeting of shareholders of the offeree company, which must be granted no earlier than 18 months before the bid was made public in accordance with Article 6(1).

Article 13

Other rules applicable to the conduct of bids

Member States shall also lay down rules which govern the conduct of bids, at least as regards the following:

- (a) the lapsing of bids;
- (b) the revision of bids;
- (c) competing bids;
- (d) the disclosure of the results of bids;

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- (e) the irrevocability of bids and the conditions permitted.

Article 14

Information for and consultation of employees' representatives

This Directive shall be without prejudice to the rules relating to information and to consultation of representatives of and, if Member States so provide, co-determination with the employees of the offeror and the offeree company governed by the relevant national provisions, and in particular those adopted pursuant to Directives 94/45/EC, 98/59/EC, 2001/86/EC and 2002/14/EC.

Article 15

The right of squeeze-out

1 Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 to 5 apply.

2 Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price. Member States shall introduce that right in one of the following situations:

- a where the offeror holds securities representing not less than 90 % of the capital carrying voting rights and 90 % of the voting rights in the offeree company,

or

- b where, following acceptance of the bid, he/she has acquired or has firmly contracted to acquire securities representing not less than 90 % of the offeree company's capital carrying voting rights and 90 % of the voting rights comprised in the bid.

In the case referred to in (a), Member States may set a higher threshold that may not, however, be higher than 95 % of the capital carrying voting rights and 95 % of the voting rights.

3 Member States shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

Where the offeree company has issued more than one class of securities, Member States may provide that the right of squeeze-out can be exercised only in the class in which the threshold laid down in paragraph 2 has been reached.

4 If the offeror wishes to exercise the right of squeeze-out he/she shall do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7.

5 Member States shall ensure that a fair price is guaranteed. That price shall take the same form as the consideration offered in the bid or shall be in cash. Member States may provide that cash shall be offered at least as an alternative.

Following a voluntary bid, in both of the cases referred to in paragraph 2(a) and (b), the consideration offered in the bid shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90 % of the capital carrying voting rights comprised in the bid.

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Following a mandatory bid, the consideration offered in the bid shall be presumed to be fair.

Article 16

The right of sell-out

- 1 Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 and 3 apply.
- 2 Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2).
- 3 Article 15(3) to (5) shall apply *mutatis mutandis*.

Article 17

Sanctions

Member States shall determine the sanctions to be imposed for infringement of the national measures adopted pursuant to this Directive and shall take all necessary steps to ensure that they are put into effect. The sanctions thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those measures no later than the date laid down in Article 21(1) and of any subsequent change thereto at the earliest opportunity.

Article 18

Committee procedure

1 The Commission shall be assisted by the European Securities Committee established by Decision 2001/528/EC (hereinafter referred to as 'the Committee').

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof, provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.

3 Without prejudice to the implementing measures already adopted, four years after the entry into force of this Directive, the application of those of its provisions that require the adoption of technical rules and decisions in accordance with paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them before the end of the period referred to above.

Article 19

Contact committee

- 1 A contact committee shall be set up which has as its functions:

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- a to facilitate, without prejudice to Articles 226 and 227 of the Treaty, the harmonised application of this Directive through regular meetings dealing with practical problems arising in connection with its application;
 - b to advise the Commission, if necessary, on additions or amendments to this Directive.
- 2 It shall not be the function of the contact committee to appraise the merits of decisions taken by the supervisory authorities in individual cases.

Article 20

Revision

Five years after the date laid down in Article 21(1), the Commission shall examine this Directive in the light of the experience acquired in applying it and, if necessary, propose its revision. That examination shall include a survey of the control structures and barriers to takeover bids that are not covered by this Directive.

To that end, Member States shall provide the Commission annually with information on the takeover bids which have been launched against companies the securities of which are admitted to trading on their regulated markets. That information shall include the nationalities of the companies involved, the results of the offers and any other information relevant to the understanding of how takeover bids operate in practice.

Article 21

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 20 May 2006. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2 Member States shall communicate to the Commission the text of the main provisions of national law that they adopt in the fields covered by this Directive.

Article 22

Entry into force

This Directive shall enter into force on the 20th day after that of its publication in the *Official Journal of the European Union*.

Article 23

Addressees

This Directive is addressed to the Member States.

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Done at Strasbourg, 21 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

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- (1) [OJ C 45 E, 25.2.2003, p. 1.](#)
- (2) [OJ C 208, 3.9.2003, p. 55.](#)
- (3) Opinion of the European Parliament of 16 December 2003 (not yet published in the Official Journal) and Council decision of 30 March 2004.
- (4) [OJ L 254, 30.9.1994, p. 64.](#) Directive as amended by Directive 97/74/EC ([OJ L 10, 16.1.1998, p. 22.](#))
- (5) [OJ L 225, 12.8.1998, p. 16.](#)
- (6) [OJ L 294, 10.11.2001, p. 22.](#)
- (7) [OJ L 80, 23.3.2002, p. 29.](#)
- (8) [OJ L 96, 12.4.2003, p. 16.](#)
- (9) [OJ L 191, 13.7.2001, p. 45.](#) Decision as amended by Decision 2004/8/EC ([OJ L 3, 7.1.2004, p. 33.](#))
- (10) [OJ L 184, 17.7.1999, p. 23.](#)
- (11) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ([OJ L 141, 11.6.1993, p. 27.](#)) Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council ([OJ L 35, 11.2.2003, p. 1.](#))
- (12) Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ([OJ L 184, 6.7.2001, p. 1.](#)) Directive as last amended by Directive 2003/71/EC ([OJ L 345, 31.12.2003, p. 64.](#))
- (13) Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies ([OJ L 222, 14.8.1978, p. 11.](#)) Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council ([OJ L 178, 17.7.2003, p. 16.](#))
- (14) Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ([OJ L 193, 18.7.1983, p.1.](#)) Directive as last amended by Directive 2003/51/EC.